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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re A.R., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. A.R., Defendant and Appellant.	A149625 (San Francisco City & County Super. Ct. No. JW15-6124)

This is an appeal from the imposition of an electronic search condition (ESC) on appellant, A.R., as a term of her juvenile probation. The grounds for the appeal are two-pronged. First, A.R. argues the ESC is unconstitutionally overbroad. Second, citing *Riley v. California* (2014) __ U.S. __ [134 S.Ct. 2473] (*Riley*), she argues the ESC violates her Fourth Amendment right to be secure against warrantless searches and seizures. Because A.R. failed to object to the ESC when imposed, she forfeited any claim of unconstitutional overbreadth. We reject her *Riley* claim on the merits. Accordingly, we affirm.

I. FACTUAL BACKGROUND

In August 2016, Alyssa Clark was on her way to a yoga class when appellant, A.R., approached from behind, grabbed her hair, jerked her neck, and ripped out her hair. A.R. stole Clark's purse, credit cards, house keys, Fitbit, and iPhone. A white Cadillac

Escalade pulled up, and A.R. quickly entered and left the scene. Officers eventually spotted A.R. and the Cadillac, and they found the wallet, house keys, and credit cards inside the vehicle. Clark never recovered her phone, purse, or several of the credit cards in her wallet.

The District Attorney filed a petition alleging robbery, a violation of section 211 of the Penal Code. The court found the robbery allegation to be true. In October 2016, the court declared A.R. a ward of the court and committed her to the care and custody of the probation department for an out-of-home placement. The court imposed a number of probation conditions, including the condition that "any electronic and/or digital device in your possession or in your custody or under your control may be searched at any time of the day or night by any peace or probation officer with or without a warrant or with or without reasonable or probable cause. The search shall be limited to any and all text messages, voice mail messages, call logs, photographs, videos, e-mail accounts and social media accounts. Social media accounts and sites include but are not limited to Facebook, Instagram, Twitter and Snapchat. Electronic and/or digital devices include but are not limited to cell phones, smart phones, iPads, computers, laptops and tablets. You are also ordered to provide any and all passwords to the devices upon request to any peace or probation officer. Lastly, you are ordered to provide any and all passwords necessary to access the information previously stated by the Court on the record." Appellant did not object to the condition when it was imposed.

II. DISCUSSION

A. Probation Exception to the Warrant Requirement

The Fourth Amendment to the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The " ' "ultimate touchstone of the Fourth Amendment is 'reasonableness.' " ' " (*Riley*, *supra*, 134 S.Ct. at p. 2482, citing

Brigham City v. Stuart (2006) 547 U.S. 398, 403.) Precedent has determined that the reasonableness standard "generally requires the obtaining of a judicial warrant." (*Vernonia Sch. Dist. 47J v. Acton* (1995) 515 U.S. 646, 653.) "In the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement." (*Riley, supra,* 134 S.Ct. at p. 2482.)

One of the exceptions to the warrant requirement is the probation exception. "A warrant requirement would interfere to an appreciable degree with the probation system, setting up a magistrate rather than the probation officer as the judge of how close a supervision the probationer requires." (*Griffin v. Wisconsin* (1987) 483 U.S. 868, 876.) Another rationale behind the exception in the case of an adult probationer is that the probationer consents to waiving his or her Fourth Amendment rights in exchange for the opportunity to avoid state prison. (*People v. Romeo* (2015) 240 Cal.App.4th 931, 939.) Conditions of probation may be imposed so long as they are "fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer." (Pen. Code, § 1203.1.)

The court has even broader discretion when it comes to minor probationers. (See *In re Josh W.* (1997) 55 Cal.App.4th 1, 5 (*Josh W.*).) Rehabilitation is a main goal of the probation department, and a juvenile court "may even impose a condition of probation that would be unconstitutional or otherwise improper so long as it is tailored to specifically meet the needs of the juvenile." (*Ibid.*) This is because the state acts in a parental role for minor probationers. (See *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1242–1243 (*Frank V.*).) Even when there is a risk of invading the probationer's protected freedoms, the state has more power to control the conduct of minors than it has for adults. (*Id.* at p. 1243.)

B. Forfeiture

If a criminal defendant does not challenge an erroneous ruling of the trial court in that court, he or she generally forfeits the right to raise the claim on appeal. (*In re Sheena*

K. (2007) 40 Cal.4th 875, 880.) As the United States Supreme Court made clear in *United States v. Olano* (1993) 507 U.S. 725, " '[n]o procedural principle is more familiar to this Court than that a constitutional right,' or a right of any other sort, 'may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.' " (*Olano,* at p. 731; see also *Sheena K.*, *supra*, 40 Cal.4th at p. 880; *People v. Saunders* (1993) 5 Cal.4th 580, 590.) *Sheena K.* carved out an exception to this rule, holding that if a constitutional challenge to a probation condition based upon vagueness or overbreadth presents a pure question of law and does not require the appellate court to reference the particular sentencing record developed in the trial court, then the lack of objection in the trial court does not preclude consideration of the claim on appeal. (*Sheena K.*, *supra*, 40 Cal.4th at p. 887; see also *People v. Ebertowski* (2014) 228 Cal.App.4th 1170, 1175 (*Ebertowski*).)

Here, A.R. did not object to the ESC in the trial court. To the extent she claims the ESC was unconstitutionally overbroad, this claim is forfeited because it cannot be decided without delving into the facts of this case. An evaluation of her overbreadth claim requires reference to and analysis of the original dispositional record—specifically, the language used by the court to impose and explain the condition, as well as A.R.'s background and delinquency history. This information is needed to determine whether the ESC is "closely tailored to [the probation condition's] purpose." (*Ebertowski*, *supra*, 228 Cal.App.4th at p. 1175.)

C. A.R.'s Fourth Amendment Claim Under *Riley*

Appellant separately argues that the ESC imposed on her violates the Fourth Amendment under *Riley*, supra, 134 S.Ct. 2473. This claim is a pure question of law and thus we consider it despite the lack of an objection. But we conclude it has no merit.

In *Riley*, the Court held that, in the context of a search incident to arrest, officers "must generally secure a warrant before conducting . . . a [data] search" of someone's cell phone. (*Riley*, *supra,* 134 S.Ct. at p. 2485.) Petitioner in *Riley* was stopped by a police officer for driving with expired registration tags. (*Id.* at p. 2480.) The officer also learned in the course of the stop that petitioner's license had been suspended. (*Ibid.*)

Petitioner was subjected to a search incident to arrest, and the contents of his cell phone were also searched without a warrant. (*Ibid.*) The United States Supreme Court recognized that "[t]he fact that an arrestee has diminished privacy interests does not mean that the Fourth Amendment falls out of the picture entirely." (*Id.* at pp. 2488–2489.) The Court emphasized how cell phones and the world of electronic data are far different than merely searching someone's pockets for a billfold or address book. (*Id.* at p. 2495.) "[C]ell phones are distinct from other physical possessions that may be searched incident to arrest without a warrant, because of the amount of personal data cell phones contain and the negligible threat they pose to law enforcement interests." (*Id.* at p. 2482.) Therefore, to the extent officers want to search an arrestee's seized cell phone, the Court's rule is "simple—get a warrant." (*Id.* at p. 2495.)

While the court in *Riley* recognized that petitioner, Riley, had privacy interests in his cellular and electronic devices, Riley had been subject to a search incident to arrest following a traffic stop. He had not been adjudicated or convicted of a crime like someone on probation. A.R. was charged with a felony; there was an adjudication proceeding; the felony was found to be true; she was deemed a ward of the court; and she was placed on probation. At the time the ESC was imposed, A.R. was much more deeply entrenched in the criminal justice system than the *Riley* petitioner was when his cell phone was searched; thus, A.R. had a lessened expectation of privacy. (See *Josh W.*, *supra*, 55 Cal.App.4th at p. 5.)

A search incident to arrest is completely different from the situation we have before us, where a minor is assigned to a probation officer and subjected to an ESC after having been declared a ward of the court after an adverse adjudication on a felony offense. There is far more than reasonable suspicion or probable cause. The charge against A.R.—of which she had notice and full opportunity to defend—has been sustained as true. Given this fundamental difference between *Riley* and what we are called upon to consider here, we see no basis for her argument. *Riley* does not apply here, and A.R. cites no authority that would suggest we should extend it to this setting. We decline to do so.

In the alternative, A.R. argues that *the probation officer* should have at least reasonable suspicion before he or she conducts a warrantless search of the minor probationer's electronic device(s), and that other law enforcement officers should not be able to conduct such warrantless searches at all. A.R. emphasizes the role of probation officers: They have the power of peace officers but also have a duty to represent the interests of minors. In support of her reasonable suspicion argument, A.R. cites *Griffin* and *United States v. Knights* (2001) 534 U.S. 112, 121 (*Knights*) for the proposition that there are some probation circumstances where officers need to act "upon a lesser degree of certainty than the Fourth Amendment would otherwise require in order to intervene before a probationer does damage to himself or society." (*Griffin*, *supra*, 483 U.S. at p. 879.) A.R. cites no authority requiring probation officers to have reasonable suspicion before they conduct a warrantless search of a minor probationer's electronic device(s) pursuant to a search condition.

The defendants in *Griffin* and *Knights* were adult probationers. We have already pointed out the reasons why a minor probationer has a lesser expectation of privacy than an adult, due to the state's parental role in the minor's reformation and rehabilitation. (*Frank V.*, *supra*, 233 Cal.App.3d at p. 1242; see also *In re Tyrell J.* (1994) 8 Cal.4th 68, 81, overruled on other grounds in *In re Jaime P.* (2006) 40 Cal.4th 128, 130.) The fact that *Griffin* and *Knights* entertain the idea that probation officers are allowed to have a "*lesser degree*" of certainty is perfectly consistent with the law in this area: that such officers—whose job it is to supervise minor probationers—may conduct a warrantless search for any reason or no reason at all, so long as it is in compliance with a valid search condition. (*Griffin*, *supra*, 483 U.S. at p. 879; *Knights*, *supra*, 534 U.S. at p. 121, italics added.) Under *Jaime P.*, a probation officer must either have reasonable suspicion *or* act pursuant to a valid probation condition. (*Jaime P.*, *supra*, 40 Cal.4th at p. 138.)

III. DISPOSITION

We affirm.

_____
Streeter, Acting P.J.

We concur:

_____
Reardon, J.

_____
Schulman, J.[*]

[*] Judge of the Superior Court of California, City and County of San Francisco, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.